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September 18, 2015

VIA ECF

Hon. Andrew J. Peck, U.S.M.J.
Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street, Courtroom 20D
New York, New York 10007

Re: *Rio Tinto plc v. Vale S.A., et al.*, Civil Action No. 14-cv-3042 (RMB) (AJP) (S.D.N.Y.)

Dear Judge Peck:

We write on behalf of defendant Vale to oppose Rio Tinto's request in its September 18 letter (Dk. 354) (the "Letter") for a stay of Your Honor's order of September 10, 2015 (Dkt 345) (the "Order"). Rio Tinto offers no basis for staying the Order, which correctly ruled – based on Rio Tinto's own unequivocal prior statements – that Rio Tinto has disclaimed privilege over any pre-suit communications with its investigators and may not raise a privilege objection during the examinations of those investigators scheduled to take place in the United Kingdom from September 28 to October 1.

For a stay to be warranted, Rio Tinto would need to show that it has a reasonable possibility of prevailing on its request for reconsideration of the Order, that it will suffer irreparable injury if a stay is not granted, and that Vale will not suffer substantial harm as a result of the stay being granted. *See In re World Trade Ctr. Disaster Site Litig.*, 503 F.3d 167, 170 (2d Cir. 2007). Rio Tinto does not even attempt to satisfy these requirements.

First, the Letter says nothing about the likelihood of Rio Tinto succeeding on the merits of its challenge to the Order, and as detailed in Vale's letter of September 16, 2015 (Dk. 347), Rio Tinto is not likely to prevail. As the Court ruled, Rio Tinto has made multiple previous statements disclaiming any privilege over its communications with the investigators, which communications are likely not subject to privilege in any event. It cannot now walk away from

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those statements to the Court and the productions that have been made of investigative materials and seek to exercise a privilege that does not exist.

Second, the closest Rio Tinto comes to claiming it will be harmed if the Order is not stayed is that its producing communications with its investigators and allowing them to answer questions about what they told Rio Tinto about their investigations – information that goes to the heart of Rio Tinto’s fraudulent concealment and equitable tolling defenses to the fact that its purported RICO claims are time-barred – would “let[] the cat out of the bag.” Letter at 2. Of course, Rio Tinto wants to keep that cat well under wraps; but any valid concern can be addressed by an order pursuant to Federal Rule of Evidence 502(d) – which Rio Tinto already seeks regarding other documents. Certainly, the fact that its case would be harmed by production of this evidence is not the type of “irreparable harm” an applicant for a stay needs to show.

Third, Vale would suffer substantial harm should the Order be stayed. Vale already has spent a great deal of time and effort pursuing, arranging, and preparing for the investigator examinations in the United Kingdom, in part due to Rio Tinto’s repeated failure to cooperate with document discovery from its investigators and its hiding the ball as to its current relationships with some of them. Should the Order be stayed, Vale will be left with an extraordinarily truncated examination – limited to issues Rio Tinto has claimed are irrelevant and unable to ask the questions during the U.K. examinations that Rio Tinto has admitted are most relevant, going directly to Rio Tinto’s affirmative claim of tolling. Should the Court then re-affirm its Order and lift the stay, Vale would have to reschedule new examinations (including seeking new Letters of Request through the High Court) and return to the United Kingdom, at significant additional expense to itself and other parties.

Accordingly, we respectfully request that the Court deny Rio Tinto’s request for a stay of the Order, and, pursuant to Vale’s letter of September 16, 2015 (Dkt. 347), also deny Rio Tinto’s request for reconsideration, and adhere to the Order as it stands.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jonathan I. Blackman', with a stylized, flowing script.

Jonathan I. Blackman

cc: All counsel of record